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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 136

RICHARD H. M. SWANN
and
SUPERVISOR OF ELECTIONS
of Dade County, Florida

Appellants,

vs.

TOM ADAMS, Secretary of State of Florida;
E. L. GATES, Supervisor of Registration of
Broward County, Florida; and
W. B. FREEMAN, Supervisor of Registration of
Monroe County, Florida

Appellees.

On Appeal from the United States District Court,
Southern District of Florida

REPLY BRIEF OF APPELLANTS

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ARGUMENT

I

APPELLEES' ARGUMENT THAT THE FLORIDA LEGISLATURE'S REAPPORTIONMENT PLAN IS NOT "INVIDIOUSLY DISCRIMINATORY" SEEKS TO IMPOSE THE MAXIMUM PERMISSIBLE DEVIATION DOCTRINE THROUGH ACCORDING A PRESUMPTION OF VALIDITY TO THE DISCRIMINATORY REAPPORTIONMENT PLAN OF A MALAPPORTIONED LEGISLATURE

The gravamen of Appellees'[1] argument is that the Florida Legislature's plan of apportionment (House Bill 17-X (66)), while discriminatory to the extent of 1.41 to 1 in one house of the Legislature and 1.30 to 1 in the other house, is not sufficiently discriminatory to be "invidious per se" (Appellees' Brief, pp. 8-10), and is thus within the outer limits of constitutional permissiveness. This position runs counter to the rule laid down by this Court in the Reapportionment Cases that, under the Equal Protection Clause of the Fourteenth Amendment, all persons are to have votes of equal weight with only such minimal deviations from mathematical equality as necessity requires. The District Court in this case had before it at least three alternatives:

(1) Appellants' plan which afforded equality of voting rights to all voters of Florida within

[1]Unless otherwise stated, references to "Appellees" and "Appellees' Brief" refer to those Appellees represented by the Attorney General of the State of Florida and to the Brief of the Attorney General.

a maximum variation of only 3.35 percent and a maximum differential of 1.058 to 1.

(2) The legislative plan which contained a maximum deviation from voter equality of 18.3 percent and a maximum differential of 1.41 to 1.

(3) An alternative plan submitted by Appellants which reduced the maximum deviation from voter equality in the legislative plan from 18.3 percent to 11 percent and the maximum differential from 1.41 to 1.23 to 1, without any change in the basic structure of the plan.

The District Court sanctioned the plan with the largest deviations from voter equality in flat contradiction of this Court's rule and without any statement of reason why. The reason, Appellants must assume, lies in the presumption of validity accorded legislative enactments.

One recent case specifically rejecting Appellees' position and approving that of Appellants' is *Maryland Citizens Committee For Fair Congressional Redistricting, Inc. v. Tawes*, 253 F. Supp. 731 (1966). *Tawes* involved a plan of congressional districting. The Court stated (pp. 733-4):

> The enactment . . . prescribes a ratio of 1 to 1.34 between the district with the least population and the district with the greatest population. In plain words this means that a vote in the least populous district was worth about one-

third more than a vote in the most populous district. The disparity is too great."

"As above indicated, Chapter 871 of the Acts of 1965, in our opinion, deviates too widely from the constitutional norm of 'one man, one vote' to be tolerated. Some departure from the ideal is of course inevitable. The equality which the Constitution commands allows, however, 'only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. Roman v. Sincock, 377 U.S. 695, 710, 84 S.Ct. 1449, 12 L. Ed.2d 620 (1964).' Drum v. Seawell, 250 F.Supp. 922 (M.D.N.C. 1966), aff'd sub nom. Drum v. Austin, 86 S.Ct. 1237 (Apr. 4, 1966). There is no rational justification for one district exceeding in population the average of all the districts in the state by 14.38%, while another falls below the average by 14.90%—a gross discrepancy of one-third. See Baker v. Clement, 247 F.Supp. 886 (M.D. Tenn. 1965) (32% discrepancy invalid); Roberts v. Babcock, 246 F.Supp. 396 (D.Mont. 1965) (46% discrepancy invalid); Meeks v. Anderson, 229 F.Supp. 271 (D.Kan. 1964) (44% discrepancy invalid). Cf. Grills v. Branigan (S.D.Ind. Feb. 17, 1966) (20% discrepancy tolerated); Moore v. Moore, 246 F.Supp. 578 (S.D.Ala. 1965) 14% discrepancy tolerated).

"Even if a district plan initially comports with

the one-to-one formula, discrepancies may be expected to arise with changing conditions. Such discrepancies are unavoidable and must be tolerated for a time, till the next census, but in initial districting the aim should be to come as closely as possible to a one-to-one ratio. There is no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground. We must therefore declare Chapter 371 of the Acts of 1965 invalid and forbid its submission in the referendum set for the fall elections of 1966.

* * * * * * * * *

"We do not doubt the power of the court in these circumstances to adopt a redistricting plan to remain in force till the General Assembly adopts its own constitutionally valid plan. Three-judge federal courts have redistricted in at least three instances. Klahr v. Goddard, 250 F.Supp. 537 (D.Ariz. 1966); Roberts v. Babcock, 246 F.Supp. 396 (D.Mont. 1965); and see People ex rel. Scott v. Kerner, 33 Ill.2d 460, 211 N.E.2d 736 (1965), where the plan was the product of consultation between the state court and a three-judge federal court. But cf. Park v. Faubus, 238 F.Supp. 62 (E.D.Ark. 1965) (at-large congressional elections ordered); Calkins v. Hare, 228 F.Supp. 824 (E.D.Mich. 1964) (same).

. . . In short, we have given dominant weight, as we think we must, to the population factor, without sacrificing other relevant considerations.

> In our plan the maximum deviation from the ideal of equality is only 5,624 (1.4%) over the average, in the Second District, and 4,849 (1.1%) below the average, in the Fourth District, so that the maximum deviation in the weight of a vote is only in the ratio of 1 to 1.026.

League of Nebraska Municipalities v. *Marsh*, 242 F.Supp. 357 (1965) involved Nebraska's newly enacted plan of unicameral apportionment. Under that plan one vote in the smallest district was equal to 1.6 votes in another district, and the ten smallest districts had two more legislators than they were entitled to on a population basis. In striking down the plan the Court said:

> "We have considered the opinion in Lucas v. Colorado General Assembly, 337 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632, indicating that a maximum population variance ratio of 1.7 to 1 is at least arguably apportioned substantially on a population basis. If there were no redistricting plan other than L.B. 628 which could be devised following county lines, the 1.6 to 1 ratio present thereunder might arguably be permissable . . .
>
> "The determinative factor, however, is that the situation does not bear out the claim of the supporters of L.B. 628 that it is the best plan which possibly could be devised. Under the teaching of the reapportionment cases, each plan must be examined on its own merits.
>
> * * * * * * *

"We recognize the unique organization of Nebraska's legislature. But in considering the constitutionality of L.B. 628, the Court cannot accept the degree of deviation from the population basis as rationally justifiable without defeating the purpose of reapportionment.

. . . The Court has considered other possible apportionment plans in reviewing the validity of L.B. 628 and found at least three alternatives which are more proportionate than this plan. In one plan Nebraska can be divided into 37 districts following county lines and have a maximum population variance ratio of approximately 1.26 between the smallest and the largest districts.

The Court then adopted the least discriminatory plan.

Appellees' position was also rejected in *Paulson v. Meier*, 246 F. Supp. 36 (1965), a North Dakota case in which the factual circumstances were strikingly similar to those in the instant case:

". . . District 9, therefore, is more than 14% under the statewide average, while District 36 is 19.4% above that average. If the mathematical weight of one person in District 36 is 1, the voting weight of one person in District 9 is 1.39 . . .

"From the foregoing analysis of House Bill 566 it clearly appears that the cumulative effect of all the disparities from population-based rep-

resentation is that persons comprising more than one-eighth of the population of this State, and who reside in the same general compact, contiguous area, have had the weight of their votes '* * * in a substantial fashion diluted when compared with votes of citizens living in other parts of the State' (Reynolds, supra, 377 U.S. p. 568, 84 S.Ct. p. 1385) and their right to vote has thereby been unconstitutionally impaired.

"Defendant strenuously contends that House Bill 566 was the best and only plan that could have been adopted by the Thirty-ninth Legislative Assembly and was the product of 'an honest and good faith effort' on the part of its members . . .

"We are satisfied that House Bill 566 does not meet the test of being the result of 'a good faith effort to establish districts substantially equal in population,' and we are convinced, and so hold, that said Bill does not comply with the constitutional requisites of the Equal Protection Clause of the Federal Constitution, and is therefore a nullity. Accordingly, Defendant's motion to dismisss is denied.

"We are thus confronted with the question of the remedy to be fashioned, and the effective date of that remedy . . .

"We have carefully and meticulously examined and considered each of the plans introduced at

the Thirty-ninth Legislative Assembly. We turn our attention to one of those plans, designated at that session as the 'Smith' plan. . .

"The 'mathematical exactness' of this 'Smith' plan is impressive. . .

"The so-called 'Smith' plan, as modified by the described change affecting District 1 and 2, is hereinafter set forth as Appendix I, and made a part hereof; the same is hereby adopted and declared to be the legislative apportionment law of the State of North Dakota. . .

Appellees argue that a presumption of validity attaches to the Legislature's reapportionment enactment because the plan "promot[es] the interest of the people as a whole," having been enacted by a "knowledgeable" Legislature (Appellees' Brief, p. 9). This is not only a classic example of lifting oneself by one's own bootstraps but is a contradiction in terms following this Court's two prior opinions holding that the Florida Legislature, exactly as constituted when it enacted HB 17-X (66), was malapportioned and not representative of the interests of the people of Florida as a whole.

Appellants believe the presumption of validity customarily accorded legislative enactments does not apply when a malapportioned legislature enacts a reapportionment. Appellants do not contend, nor need they contend, that all enactments of a constitutionally malapportioned legislature are void per se or that the presumption of validity is not applicable when the legislation pertains to matters other than reapportionment. But Appellants

do maintain that no automatic presumption of validity attaches to the reapportionment enactments of a malapportioned legislature. To the contrary, the attempt of any malapportioned legislature to reapportion itself should be most carefully scrutinized, without the benefit of any presumption of validity to ward off such scrutiny.

Appellants' approach recognizes that practical consequences do derive from the determination of courts as to whether a presumption of validity attaches or does not attach to the apportionment enactments of a malapportioned legislature. District Courts, like the District Court in this case, invariably refuse to compare the plan enacted by the legislature with other possible plans, if they initially determine that the enacted plan is entitled to the protection of the presumption of validity. The Nevada Court said so in *Dungan v. Sawyer*, 253 F. Supp. 352 (1966). Appellees understandably relied on this case (Appellees' Brief, p. 19) in supporting the decision appealed from, since the Court in *Dungan* forthrightly attaches a protective presumption of validity to the efforts of a malapportioned and "rural dominated legislature which gave up no more than it believed it must" to produce a plan that the court described, after declaring it constitutionally permissible, as approaching "dangerously close to the edge of unconstitutional waters." The District Court in the instant case even pretended that the Appellants' joint plan did not exist. On the other hand, it is clear that when Courts refuse to attach a presumption of validity to the reapportionment acts of a malapportioned legislature, they inevitably make the comparison between the enactment and the best possible plan that could have been enacted, as did the Courts in *Tawes*, *Marsh* and *Paulson*, quoted above.

Recognition of the presumption of validity leads inevitably to a refusal to compare what is with what might have been, and this refusal leads on to the standard of "maximum permissible deviation". If a court refuses to compare the enacted plan with the best possible plan that was or could have been presented, it can only compare the plan to those in effect in other States in order to see if it falls within so-called constitutionally permissive outer limits, defined in *Toombs v. Fortson*, 241 F. Supp. 65 (D.C. Georgia, 1965), et seq. (see Appellants' Main Brief, pp. 12-18) as a 15 percent variation from equality. The Appellees now ask this Court to adopt 18 percent as a figure within constitutionally permissive limits (see Appellees' Brief, pp. 17-21). This unfortunate approach of the Appellees and the Florida District Court has now eroded the *Toombs* 15 percent maximum to Florida's 18 percent, which in turn gave way to Nevada's 22 percent.

To halt this process this Court must deny any presumption of validity to apportionment legislation enacted by a malapportioned legislature. Unless this Court does so, the great democratic revolution in state government which began with *Baker v. Carr*, 369 U.S. 186 (1962) must end with some bland percentage expression of a maximum permissible deviation.

II

APPELLANTS HAVE THE LEGAL STANDING TO PROSECUTE THIS APPEAL

Appellants' main Brief (pages 25-28) covers this issue in detail. In reply to the Briefs of Appellees (pp. 23-25), Appellants invite the court's attention to the fact

that Appellees have repeated the error contained in their Motion to Affirm or Dismiss by stating that Dade County is over-represented in the Florida Senate by 5.9 percent. Dade County is, in fact, under-represented by 5.9 percent (see transcript of record, page 59, showing the ideally sized senatorial district with a population of 103,158 as compared to the average 109,219 persons per Senator pertaining in the Senatorial Districts which include Dade County). Since Dade County is under-represented in the Senate by 5.9 percent, the voters of Dade County and Appellant Swann are under-represented to a substantially greater extent under HB 17-X(66) than they would be under the joint plan proposed by Appellants. Even on the narrow criteria for determining standing suggested by Appellees, Appellants have standing.

III

THE MULTI-MEMBER DISTRICTS IN THE REAPPORTIONMENT PLAN OF APPELLANTS DO NOT DISCRIMINATE AGAINST POLITICAL OR RACIAL MINORITIES.

The Attorney General has responded to the argument of the amici in the final paragraph on page 22 of his Brief. Without a showing that single member districts are generally used throughout the State except where there are concentrations of minority groups, political, racial, or religious, an apportionment plan incorporating some multi-member districts is constitutional. There has been no showing, or attempt to show, unconstitutional discrimination under the reapportionment plan jointly submitted by Appellants. There can be no such showing. This Court has dealt with almost identical situations in *Fortson v.*

Dorsey, 379 U.S. 433 (1965) and *Burns v. Richardson* ___ U.S. ___, 16 L. Ed. 2d 376 (1966). Part II of the *Burns* opinion deals with this specific issue at some length.

The point of view of the Republican amici curiae on this issue might well have changed since the election of November 8, 1966 in which a Republican was elected Governor of Florida for the first time since reconstruction and the Republican national tide was significantly evident in elections to the Florida Legislature. These election results produced empirical proof that multi-member Districts are not discriminatory per se, and certainly not discriminatory insofar as the Republican Party in Florida is concerned.

CONCLUSION

In concluding, Appellants would call the circumstances of Florida's proposed Constitutional Revision to the attention of the Court. Article XVII of the Florida Constitution provides for two methods of revising the State Constitution. The first is by Constitutional Convention, as provided in Section 2 of the Article in the following terms:

> " . . . Delegates to the convention shall equal in number and be apportioned among the various counties as the membership of the house of representatives is apportioned.

The second method is by the State Legislature, as provided in Section 4 of the Article in these terms:

" . . . either branch of the legislature . . . may

propose by joint resolution a revision of the entire constitution . . . If the joint resolution is adopted by vote of three fifths of the members elected to each house, the yeas and nays shall be entered upon their respective journals. . . ."

In either case, it will be apparent to the Court that the apportionment of the drafting body, be it convention or legislature, is a key factor in the State Constitutional revision process.

The 1965 Florida Legislature, apportioned in a manner twice held unconstitutional by this Court, set the constitutional revision process in motion. A Constitutional Revision Commission was created by the Legislature to draft a new State Constitution. That Commission prepared a first draft, held lengthy public hearings thereon, and has recently promulgated a second draft based upon those public hearings and its own discussions and ideas. It proposes to place a draft of a revised Constitution in the hands of the 1967 Legislature, scheduled to meet in regular session at the beginning of April, 1967. The Legislature has indicated an intention to go into special session immediately following the adjournment of the regular session, to consider the best means of effecting constitutional revision.

These developments add a further significant question to those already pending before the Court in this case. That question, succinctly put, is whether a malapportioned legislature can participate in the revising of a State's organic law. For reasons already stated at length, Appellants respectfully contend that an unconstitutionally apportioned legislature cannot and should not be per-

mitted the attempt. Even assuming, only for the sake of argument, that a presumption of validity should be accorded the apportionment enactments of a malapportioned legislature, Appellants submit that no such presumption should be further extended to cover a malapportioned legislature during its crucial deliberations and participation in the state constitutional revision process.

Respectfully submitted,

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Mr. Justice White delivered the opinion of the Court.

This case presents still another development in the efforts of the State of Florida to apportion its legislature in accordance with the requirements of the Federal Constitution. There have been previous chapters in this story. The litigation began in 1962. On June 22, 1964, in *Swann* v. *Adams*, 378 U. S. 553, we reversed the judgment of the three-judge District Court upholding the then current legislative apportionment in Florida and remanded the case for further proceedings, consistent with the Court's opinion in *Reynolds* v. *Sims*, 377 U. S. 533, and its companion cases. The District Court then deferred further action until the conclusion of the legislative session which convened on April 6, 1965. The legislature proceeded to reapportion the State on June 29, 1965. The District Court forthwith held the new plan failed to meet the requirements of the Fourteenth Amendment but approved the plan on an interim basis, limiting it to the period ending 60 days after the adjournment of the 1967 session of the Florida Legislature. This Court, finding no warrant for perpetuating what all conceded was an unconstitutional apportionment for another three years, reversed the judgment and remanded the case to the District Court so that a valid reapportionment plan would be made effective for the

1966 elections. *Swann* v. *Adams*, 383 U. S. 210. The Florida Legislature again acted on the matter in March 1966 by adopting still another reapportionment plan which the appellants promptly attacked in the District Court.

The new plan provides for 48 senators and 117 representatives, and includes what in effect are multimember districts for each house. The senate districts range from 87,595 to 114,053 in population per senator, or from 15.09% over-represented to 10.56% under-represented. The ratio between the largest and the smallest district is thus 1.30:1. The deviation from the average population per senator is greater than 15% in one senatorial district, is greater than 14% in five more districts and is more than 10% in still six other districts. Approximately 25% of the State's population living in one quarter of the total number of senatorial districts is under- or over-represented by at least 10%. The minimum percentage of persons that could elect a majority of 25 senators is 48.38%

In the house the population per representative ranges from 34,584 to 48,785 or from 18.28% over-represented to 15.27% under-represented. The ratio between the largest and the smallest representative district is 1.41 to 1. Two districts vary from the norm by more than 18% and another by more than 15%, these three districts having seven of the 117 representatives. Ten other districts with 22 representatives vary from the norm by more than 10%. There is thus a deviation of more than 10% in districts which elect 29 of the 117 representatives. 24.35% of the State's population live in these districts. The minimum percentage of persons that could elect 58 representatives is 47.79% and a majority of 59 representatives could be elected by 50.43% of the population.

The District Court recognized that "apportionment must be substantially on a population basis" but that

"mathematical exactness or precision is not required." It went on to hold "[s]uch departures as there are from the ideal are not sufficient in number or great enough in percentages to require an upsetting of the legislative plan . . . what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests." Accordingly, the plan was held constitutional.

The State would have us dismiss this case for lack of standing on the part of appellants to maintain this appeal because appellants are from Dade County, Florida, which appellants concede has received constitutional treatment under the legislative plan. Appellants, however, had before the District Court their own plan which would have accorded different treatment to Dade County in some respects as compared with the legislative plan, and the alternative plan was rejected by the District Court. Moreover, the District Court has apparently consistently denied intervention to other plaintiffs, seemingly treating the appellants as representing other citizens in the State. The challenge to standing cannot succeed.

We reverse for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts with respect to both the senate and house of representatives. *Reynolds* v. *Sims*, *supra*, recognized that mathematical exactness is not required in state apportionment plans. De minimus deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed de minimus and none of our cases suggests that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy. On the contrary, the *Reynolds* opinion limited the allowable deviations to those minor variations which

"are based on legitimate considerations incident to the effectuation of a rational state policy." 377 U. S. 533, 579. Thus that opinion went on to indicate that variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines. Likewise, in *Roman* v. *Sincock*, 377 U. S. 695, 710, the Court stated that the Constitution permits "such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

The State relies on *44th General Assembly* v. *Lucas*, 379 U. S. 693; *Burnette* v. *Davis*, 382 U. S. 42; and *Harrison* v. *Schaefer*, 383 U. S. 269, which were *per curiam* affirmances of lower court judgments in reapportionment cases. The State suggests that the plans approved in those cases involved variations of equal or greater magnitude than those revealed by the Florida apportionment, and for that reason the judgment here should be affirmed. But in none of these cases was the issue of the validity of the differences in population between various legislative districts either raised or ruled upon in this Court. There was no occasion to explore whether or not there was ample justification for the challenged variations. And in *Lucas* v. *Colorado General Assembly*, 377 U. S. 713, 727, 734–735, the Court expressly reserved decision upon the validity of a variance ratio of 1.7 to 1. In any event, the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State. "What is marginally permissible in one State may be unsatisfactory in another, depending upon the particular circumstances of the case." *Reynolds* v. *Sims*, 533 U. S. 553, 578.

As this case comes to us we have no alternative but to reverse. The District Court made no attempt to ex-

plain or justify the many variations among the legislative districts. As for the State, all it suggested in either the lower court or here is that its plan comes as close as "practical" to complete population equality and that the State was attempting to follow congressional district lines. There was, however, no attempt to justify any particular deviations, even the larger ones, with respect to either of these considerations. Moreover, the State's brief states only that the legislature followed "in most instances" the congressional boundaries and with respect to "practicality" it seems quite obvious that the State could have come much closer to providing districts of equal population than it did. The appellants themselves placed before the court their own plan which revealed much smaller variations between the districts than did the plan approved by the District Court. Furthermore, appellants suggested to the District Court specific amendments to the legislative plan which, if they had been accepted, would have measurably reduced the population differences between many of the districts. Appellants' own plan and their suggested amendments to the legislative plan might have been infirm in other respects but they do demonstrate that a closer approximation to equally populated districts was a feasible undertaking. The State, with admirable candor, states that it offered no evidence in the District Court to explain the challenged variations with respect to either the house or the senate. In its view, however, the plan should be approved on the record as it is.

We think the better view is that taken by the three-judge court in Maryland which disapproved a legislative plan involving an over-representation of 14.90% and an under-representation of 14.38% because, as Judge Sobeloff said, there was "no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground." *Maryland Citizens Committee for Fair Congressional Redistricting, Inc.* v.

Tawes, 253 F. Supp. 731, 733. Compare *League of Nebraska Municipalities* v. *Marsh*, 242 F. Supp. 357, disapproving a ratio of 1.6 to 1 between the smallest and the largest district absent satisfactory explanation by the State and *Paulson* v. *Meier*, 246 F. Supp. 36, which found a ratio between the smallest and largest district of 1.39 to 1 to be unjustified on the basis offered by the State.

The appellants complain of other aspects of the plan besides unequally populated legislative districts. Under the new statute three senators were not required to run for election in 1966 but were allowed to finish their present terms expiring in 1968. These three senators, as the District Court noted, were elected in districts that are identical in territory to their districts under the legislative plan. Also, one senate and six house seats were subject to residency requirements. The District Court found no invidious discrimination in these aspects of the plan. Appellants also claim that the legislative plan discriminates invidiously by under-representing the populous urban counties and by over-representing the sparsely settled rural counties in both houses. The court below found that "what deviation there is does not discriminate to any great extent against any section of the state or against either rural or urban interests." In the light of our disposition of this case, however, we need not reach and decide any of these additional issues, although we note that *Reynolds* v. *Sims* indicates the constitutional impropriety of maintaining deviations from the equal population principle in deference to area and economic or other group interests. 377 U. S. 533, 579–580.

Reversed.

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Mr. Justice Harlan, whom Mr. Justice Stewart joins, dissenting.

Reynolds v. *Sims*, 377 U. S. 533, laid down a "one man-one vote" mandate for the structuring of all state legislatures, but the Court there recognized, as it does again today, that "mathematical exactness is not required," *ante*, p. 3, and that variations are acceptable if they "are based on legitimate considerations incident to the effectuation of a rational state policy . . . ." 377 U. S., at 579, cited, *ante*, p. 4. The Court refuses, however, to accept Florida's present legislative apportionment plan, at least on the record before us, because neither the State nor the District Court justified the relatively minor variations in population among some of the districts.

This holding seems to me to stand on its head the usual rule governing this Court's approach to the validity of legislative enactments, state as well as federal, which is of course that they come to us with a strong presumption of regularity and constitutionality. See, *e. g.*, *Butler* v. *Pennsylvania*, 10 How. 402; *Davis* v. *Department of Labor*, 317 U. S. 249; *Fleming* v. *Nestor*, 363 U. S. 603. Accordingly, I do not believe the burden is on the State to justify every aspect of a complex plan completely restructuring its legislature, on pain of its

being declared constitutionally invalid by the judiciary. I can think of no other area of law in which there is an analogous presumption of invalidity attaching to a legislative enactment of a State in an area of its admitted competence and superior experience. The burden of showing unconstitutionality should be left here, as in other cases, on the attacking party.

I would affirm the judgment of the District Court on the grounds (1) that the plan enacted by the Florida Legislature is in substantial compliance with the rule of *Reynolds* v. *Sims*, *supra*, and (2) that the appellants have not shown any invidious purpose for, or effect flowing from, the mathematical variations among certain districts.